



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

AMENDED DECISION

FTI/172227

PRELIMINARY RECITALS

Pursuant to a petition filed February 23, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 24, 2016, at Milwaukee, Wisconsin.

The only two changes are in bold toward the end of the decision.

The issue for determination is whether the petitioner's appeal of a February 2013 tax intercept is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

[REDACTED]artment of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of [REDACTED]

2. On September 25, 2012 the agency sent the petitioner a notice of FoodShare (FS) overissuance. The notice stated that under claim number [REDACTED] the petitioner was overpaid \$1,704 in FS benefits from April 1, 2009 to March 31, 2010.
3. On September 25, 2012 the agency sent the petitioner another notice of FS overissuance. This notice stated that under claim number [REDACTED] the petitioner was overpaid \$1,704 in FS benefits from April 1, 2010 to March 31, 2011.
4. On September 25, 2012 the agency sent the petitioner another notice of FS overissuance. This notice stated that under claim number [REDACTED] the petitioner was overpaid \$1,704 in FS benefits from April 1, 2011 to March 31, 2012.
5. On October 2, 2012 the agency sent the petitioner a Repayment Agreement. The Repayment Agreement reminded the petitioner that she still owed the above-stated overpayments.
6. On November 2, 2012, October 4, 2012, and January 3, 2013 the agency sent the petitioner dunning notices reminding her that she still owed the above-referenced overpayments.
7. On February 15, 2013 the agency sent the petitioner a notice stating that they could intercept her taxes to cover the above-referenced overpayments.
8. All of these notices including the Overpayment Notices, Repayment Agreement, and Dunning Notices were sent to the petitioner at an address on [REDACTED] Street. The petitioner was incarcerated at [REDACTED] from March 26, 2012 to March 23, 2013. The agency never received returned mail from that [REDACTED] Street address nor a forwarding address for the petitioner's mail. The reason for the underlying overpayment is that the petitioner was on absconder status from the Department for Corrections. A person on absconder status is not allowed FS benefits. The petitioner nonetheless applied for and received FS benefits. When the agency learned that she had been an absconder the agency established the above-referenced overpayment claims against the petitioner.
9. Effective April 1, 2013 the petitioner began receiving FS benefits again.
10. On April 8, 2013 the agency sent the petitioner a notice stating that her monthly FS benefits were reduced from \$526 to \$474. The notice went on to state that the reason for this reduction was because she was paying back benefits she was not entitled to receive. "To learn more, please see your FoodShare Repayment Agreement. Keep in mind that your repayment agreement gave you a chance to appeal your repayment amount. As a result you will not be able to ask for a Fair Hearing about this Repayment." The petitioner was paying back the above-listed overpayments. This notice was sent to the same [REDACTED] Street address as the overpayment notices, Repayment Agreement, Dunning Notices, and Notice of Tax Intercept.
11. On February 23, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

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To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the notice was February 15, 2013. The petitioner did not file for a Request for Fair Hearing until February 23, 2016. This is well beyond her 30 day window to appeal.

The petitioner alleges that she did not get the notice until after her appeal rights had expired. She has provided documentation that when the tax intercept notice was sent she was incarcerated in [REDACTED]. However, the agency also never received any return mail from the [REDACTED] Street address where the tax intercept had been sent. It is very likely that a person at this address was forwarding the petitioner's mail to her while she was incarcerated. When the petitioner reapplied for FS benefits immediately following her release from incarceration, she continued to provide and receive mail at this same [REDACTED] Street address. I do not find the petitioner's testimony that she never received these notices, and never knew about the tax intercept or overpayments credible.

In this case even if the petitioner had not received the tax intercept notice, she does not seek to contest the tax intercept. Rather, she wishes to contest the underlying overpayment.

At a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

The petitioner would have had an opportunity to contest the underlying overpayment. Although I do not find the petitioner's testimony that she never received the overpayment notices credible, the agency sent the petitioner an April 8, 2013 notice referencing this overpayment. The petitioner's monthly FS benefits have been reduced since April of 2013 for recoupment of this overpayment. The petitioner did not request a fair hearing until February 23, 2013, nearly 23 months after the latest possible date in which she could have first been informed about the overpayment. A person has 90 days to request a hearing for a FS overpayment. A request 23 months after the petitioner learned about this overpayment is not timely.

Even if the petitioner's appeal of the overpayment was timely, I would rule against her. The reason for the overpayment was that she was on absconder status from the Department of Corrections (DOC). Pursuant to the Federal FS regulations a person is not eligible for FS benefits if he or she is an absconder from probation and parole. *FoodShare Wisconsin Handbook §3.18.1*. The petitioner's argument that she was not entitled to due process because she was not informed of this law is not persuasive. The petitioner should have never been able to apply for FS benefits because she should have been in custody. Ignorance of the law is never an excuse to violate the law. Perhaps the petitioner could have informed the agency that she was an absconder and asked for guidance in determining whether she was eligible for FS benefits given her absconder status. She did **not** do that, likely because she did not want the agency to inform DOC of her whereabouts, potentially causing her to go into custody. However, because the petitioner's appeal of the tax intercept and of the overpayments is untimely, I do not need to reach these issues or conclusions on the merits.

CONCLUSIONS OF LAW

The petitioner's appeal of a February 2013 tax intercept is **not** timely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

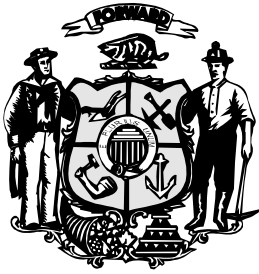
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 16, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit